No. 80-586

IN THE

Supreme Court of the United States

October Term, 1980

CHEVRON SHIPPING COMPANY (STANDARD OIL COMPANY OF CALIFORNIA),

Petitioner,

vs.

GILBERT A. BAPTISTE,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, Second Appellate District — Division One.

SUPPLEMENT TO ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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ARGUMENT.

I.

Petitioner's Reply Arguments Are Meritless and Untimely.

As previously set forth in respondent's Answer to Petition for Writ of Certiorari, petitioner has failed to meet its burden of establishing jurisdiction under 28 USC § 1257. Petitioner, in its Reply brief, raises three untenable points for the first time, in an unconvincing attempt to argue that the final judgment rule has been satisfied. Had petitioner properly raised these points in its opening brief in the first place, respondent would have had the opportunity to respond in depth. Due to time constraints, respondent cannot reply in detail but the points raised are obviously fallacious.

For example, petitioner has cited no cases which deal with pleading questions or pretrial interlocutory decrees like that involved in the instant case. Petitioner instead misdirects this Court's attention to the case of *Madruga v. Superior Court*, 346 U.S. 556 (1953), which involves whether or not a state court had original jurisdiction to even hear an action determined not to be one in rem in admiralty.

The issues presented by the *Madruga* facts are far removed from the pleading question involved herein, whereas the cases cited in respondent's Answer involving pretrial pleading determinations are clearly applicable. These cases hold that the final judgment rule is not satisfied when the decree or order in question does not effectively end the litigation on the merits and the ruled-upon matter remains inseparable from the other major issues to be tried.

In *Gospel Army v. Los Angeles*, 331 U.S. 543, 546-547 (1947), in the course of determining that a judgment of the California Supreme Court was not a final judgment for the purposes of the rule, this Court states:

> " '[T]he test is not whether under local rules of practice the judgment is denominated final . . . but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that the adjudication is not subject to further review by a state court. . . .' [citation]."

The petition should therefore be denied.

Respectfully submitted,

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